IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO. 1448 OF 2003

Shri Manmath Swami Deosthan Trust
Commiittee, Shrikshetra Kapildhar,
(A Registered Trust under B.P.T. Act)
having its Registration No.986,
Aurangabad). ... Appellant

V/s

Shri babu Manmathswami Dasange & ors. ... Respondents

Shri R.S. Deshmukh with S.B. Kulkarni for the appellant.

Shri K.Y. Mandlik for Respondent Nos. 1 and 3 to 7.

Smt. Subhangi Deshmukh for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 9TH DEC., 2004.

P.C.:

1. Heard advocates for the appellant and respondents.

2. This appeal was kept today by consent of both parties high on board. Smt. Subhangi Deshmukh, advocate appears today and submits that she has filed Vakalatnama and she wants to appear on behalf of the respondent. However, she is unable even to mention to whom she is representing out of 15 respondents. I am satisfied that this is nothing but the delaying tactics

on the part of the respondents and, therefore, no adjournment can be granted on that count.

3. The appeal arises out of the order passed by the Addl. District Judge, Solapur, dated 6.1.2003 who rejected the application of the appellants confirming the order passed by the Joint Charity Commissioner, Pune, dated 5.2.1991 directing suo-moto proceeding under Sec. 50A(2) of Bombay Public Trusts Act be initiated for the amalgamation and framing a common scheme for the two trusts, namely, (1) Manmath Swami Sansthan, Kshetra Kapildhar, Adava Rasta, Barshi, P.T.R. No. A-284-Solapur, and (2) Shri Manmath Swami Devasthan Committee, Kapildhar, Dist. Bhir, P.T.R. No. A-986-Bhir. It was further directed that the matter be sent to the Deputy Charity Commissioner, Pune Region, Pune, and notices were issued accordingly. This order was carried to the District Court, Solapur, which, after hearing both parties came to be rejected by the Addl. District Judge, Solapur, confirming the impugned order of the Joint Charity Commissioner, Pune. Hence the present appeal is filed.

4. Perused the record. It is needless to mention that this is the second appeal and, therefore, we have to see

if there is any substantial question of law involved in this appeal. Taking into consideration the facts involved in the appeal, it is to be seen that admittedly there is one deity for which two rival Trusts are claiming administration of a deity. Both the Courts below have taken the view that it would not be in the interest of the deity to allow administration of deity by two rival Trusts which would be detrimental to the interest of the Trusts and, therefore, the scheme for amalgamation and framing of common scheme was prepared by the Joint Charity Commissioner which was endorsed to by the lower Appellate Court Judge.

5. On the last occasion, the learned counsel for the appellant had raised so-called question of law to the effect that the Joint Charity Commissioner had directed the Deputy Charity Commissioner, Pune Region, Pune to proceed with the compliance of the directions regarding amalgamation of framing of common scheme, however, the work was in fact entrusted to the Asstt. Charity Commissioner, Pune Region, Pune and, therefore, according to him, it was illegal. Further, if we peruse the section of Bombay Public Trusts Act, it is clear that the authorities, namely, the Deputy Charity Commissioner and Assistnt Charity Commissioner are

having concurrent jurisdiction and, therefore, there was no illegality committed in the process at all by any authority.

6. At this stage, the learned counsel for the appellants (not one who had earlier appeared) appeared and submitted that he should be heard in this matter, hence he was given opportunity to be heard. He brought to my notice the contents of para 9 of the order of the Joint Charity Commissioner, Pune Region, Pune and submitted that when Appeal No. 15 of 1988 and Revision Application No. 9 of 1986 were fixed for final orders on that day, this order below Exh.1 directing suo-moto proceeding be initiated for the amalgamation came to be passed without show cause notice to the parties. In support of his version, he relied upon the ruling of this Court in the case of **Taher Alimohomamad Poonawala v/s Quizar Shaikh Nomanbhoy & ors. reported in A.I.R. 1995 Bombay 422**, in order to butress his argument that without show cause notice, suo-moto amalgamation proceeding contemplated under Sec. 50-A(2) of the Bombay Public Trusts Act cannot be commenced. However, the ratio laid down by this judgment of the Single Judge, in fact, supports the order being passed today. It is to be noted that, in that proceeding the learned

Judge held that the show cause notice was required to be issued to the parties before such proceeding under Sec. 50-A(2) of the B.P.T. Act was to be initiated. Obviously, that observation was on the basis of facts and circumstances involved in that appeal. In the present case before us, it must be borne in mind that both the parties were present before the Joint Charity Commissioner and, therefore, separate show cause notice was not required to be issued to them at all.

So far as other observations of the learned Single Judge are concerned, they are regarding the manner in which the order of the Charity Commissioner should be issued. In other words, it is observed that before passing suchs order the Charity Commissioner should "reason to believe" that the proposed amalgamation of the two Trusts of the proposed scheme, in respect of single Trust would be necessary for better management of the Trust concerned. In this case, the learned Charity Commissioner had in fact given reasons in detail in para 9 of the order and, therefore, in my view, there is sufficient compliance with the directions issued by the learned Single Judge in the said ruling. Be that as it may, the fact remains that, I am satisfied that no separate show cause notice was required to be issued to

the parties when both the parties were present before the Joint Charity Commissioner in the related matters and, therefore, the order of the Joint Charity Commissioner did not suffer from any irregularity or illegality.

7. For the reasons recorded above, I hold that the appeal deserves to be dismissed in limine.

The learned Deputy Charity Commissioner, Pune Region, Pune, is hereby directed to complete the process of the initiation for the amalgamation and framing of common scheme for the two Trusts within three months from the date of writ of this Court.

It is clarified that the Deputy Charity Commissioner or the Assistant Charity Commissioner, Pune Region, Pune only shall proceed with the compliance of this order and not any other authority including the Deputy Charity Commissioner, Solapur.

With these directions, the appeal stands disposed of.

.....